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Department of the Treasury

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Third Party Communication: None

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PLR-130219-13

Date:

January 16, 2014

LEGEND

Trust =

Date 1 =

Date 2 =

Year 1 =

LLC =

X =

Y =

a =

b =

State =

Dear :

This responds to a letter dated July 3, 2013, and subsequent correspondence, submitted on behalf of Trust by Trust's authorized representatives, requesting rulings under §§ 704, 721, 731, and 7701 of the Internal Revenue Code.

The information submitted states that Trust was created on Date 1. Trust currently holds a diversified portfolio of securities including, without limitation, (i) all of the membership interests in LLC, a State limited liability company, (ii) marketable securities and other investments with an aggregate fair market value of approximately \$a, and (iii) cash and cash equivalents.

LLC was formed by Trust in Year 1 to facilitate the management and eventual distribution of Trust assets to Trust's remainder beneficiaries. LLC is managed solely by the Trustees and will continue to be managed by the Trustees for a reasonable period of time during the winding up of Trust. LLC has been capitalized with Trust assets, and the current assets of LLC include, without limitation, marketable securities and other investments with an aggregate fair market value in excess of \$b. LLC has not elected and will not elect to be treated as an association taxable as a corporation so long as LLC remains wholly owned by Trust, and therefore, Trust has treated and will continue to treat LLC as a disregarded entity for federal income tax purposes.

Substantially all of the marketable securities of Trust and LLC (excluding cash maintained in accounts for administration expenses) are held in numerous, separate investment accounts, with each investment account being managed by a professional investment manager, subject to defined investment objectives and guidelines for each investment account. The investment managers actively manage the investment accounts and make decisions about selling and buying securities based on their perception of opportunities in their sector. Thus, Trust and LLC have and will continue to have significant turnover in the composition of their respective portfolios.

The trust agreement provides that Trust will be held until the death of every member of a specified group of individual beneficiaries. The last living member of that specified group died on Date 2. Thus, Trust is now in the process of implementing certain steps for a smooth and orderly distribution of Trust assets to the remainder beneficiaries.

To facilitate distribution of Trust assets by asset class, the Trustees propose to form two separate series of LLC in accordance with State law. One series of LLC, X, will be capitalized principally with equity securities from Trust and LLC, and the other series of LLC, Y, will be capitalized principally with fixed income securities from Trust and LLC. Trust represents that X and Y will each qualify as a series within the meaning of Proposed Treas. Reg. § 301.7701-1(a)(5)(viii)(C). Neither X nor Y will elect to be treated as an association taxable as a corporation for so long as they remain wholly-owned by Trust, and therefore, X and Y will be treated by Trust as disregarded entities for federal tax purposes.

Immediate full and final distribution of Trust principal is not prudent at this time because of ongoing litigation. Until resolution of this litigation, the Trustees intend to hold a portion of Trust assets in reserve for ongoing trust administration expenses and resolution of the litigation. Therefore, Trust will continue to hold assets outside of X and Y after the initial capitalization of X and Y.

The trustees of Trust propose to distribute membership interests in X and Y to the remainder beneficiaries (in accordance with the fractional share of Trust residue to which each remainder beneficiary, respectively, is entitled) rather than the actual individual securities owned by X and Y. Trust states that the distribution of X and Y interests by Trust should be treated as (i) a non-taxable pro rata distribution of X and Y assets (subject to any related liabilities) to the remainder beneficiaries (in accordance with the fractional share of Trust residue to which each remainder beneficiary, respectively, is entitled), as if such assets had been distributed outright from Trust to the remainder beneficiaries; followed by (ii) a deemed capital contribution of those same assets by the remainder beneficiaries to X and Y in a non-taxable exchange for interests in X and Y. Trust represents that, pursuant to Proposed Treas. Reg. § 301.7701-1(a)(5), X and Y will each be treated as having been converted to a partnership for federal tax purposes upon the distribution of interests in X and Y to the remainder beneficiaries.

After Trust has distributed interests in X and Y to the remainder beneficiaries, Trust contemplates making additional distributions to the remainder beneficiaries. The Trustees contemplate permitting each remainder beneficiary to elect whether to receive his or her additional Trust distribution in the form of a capital contribution to X or Y, or as a separate-share Trust distribution to the remainder beneficiary outright (in cash or in kind). If the remainder beneficiary elects to receive the distribution in the form of an additional capital contribution to X or Y (an "additional contribution"), Trust will contribute the remainder beneficiary's share of Trust assets (in accordance with, and proportionate to, each remainder beneficiary's vested residual percentage share of Trust) directly to X or Y on behalf of the remainder beneficiary. Trust intends to treat the additional contributions as a deemed distribution of Trust assets to the remainder beneficiaries, followed by a deemed contribution of the distributed assets by the remainder beneficiaries to X or Y.

Trust represents that the Trustees will make cash distributions sufficient to carry out all distributable net income of Trust, so that Trust corpus distributions comprising or adding to the beneficiaries' membership in X and Y will not carry out any distributable net income and, therefore, no gain or loss would be recognized by Trust or by the remainder beneficiaries upon the deemed in-kind distributions of Trust assets comprising (or adding to) X and Y.

Trust represents that X's and Y's operating agreements will be drafted with the intent to comply with §§ 704(b) and 704(c). They will require that a separate capital

account be established and maintained for each partner in accordance with the capital account maintenance rules of § 1.704-1(b)(2)(iv). The agreements will require that on liquidation of X or Y, liquidating distributions will be made in accordance with the capital account balances of the partners. The agreements will also contain a qualified income offset, as defined by § 1.704-1(b)(2)(ii)(d). Except as required by § 704(c), each partner will be allocated a pro rata share of partnership income, gain, loss, deduction, and credit in accordance with the regulations under § 704(b).

Additionally, the agreements will provide that the capital accounts of the partners will be increased or decreased to reflect a revaluation of the property of X and Y on X's and Y's books upon the occurrence of a revaluation event. Revaluation events will include: (a) the acquisition of an additional interest by any new or existing partner in exchange for more than a de minimis contribution of property (including money) or in exchange for the provision of services to or for the benefit of the partnership; (b) a distribution of more than a de minimis amount of property by X or Y to a partner as consideration for an interest in such partnership; (c) the last day of each fiscal quarter, in accordance with generally accepted industry accounting practices; and (d) the liquidation of X or Y within the meaning of Treas. Reg. § 1.704-1(b)(2)(ii)(g). Thus, X and Y will make revaluations at least annually in accordance with § 1.704-3(e)(3)(iii)(B)(2)(ii).

Trust expects that X and Y will hire various managers to actively manage the investments. Each manager will manage their portfolio and make decisions about selling and buying securities based on their perception of opportunities in their sector. Thus, Trust expects that X and Y will have significant turnover in the composition of their portfolios.

The following are representations by Trust regarding X and Y:

- When X and Y each convert to a partnership, Trust represents that X and Y each will qualify as a "securities partnership" as defined in § 1.704-3(e)(3)(iii);
- Each transferor to X or Y will contribute (or be deemed to contribute) only cash and/or a diversified portfolio of stock and securities (within the meaning of § 1.351-1(c)(6)(i));
- X and Y will continue to invest only in cash and/or a diversified portfolio of stock and securities (within the meaning of § 1.351-1(c)(6)(i));
- Any other transferor who has or will contribute assets to X or Y has contributed or will contribute only cash and/or a diversified portfolio of stock and securities;
- The deemed contribution of the diversified portfolio of securities to X and Y by the beneficiaries of Trust will not be taxable under § 721(b) because this deemed contribution will not result, directly or indirectly, in a diversification of the interests of the respective remainder beneficiaries;
- The securities contributed to X and Y will be actively traded within the meaning of § 1.1092(d)-1;

- For purposes of making reverse § 704(c) allocations, X and Y will adopt the partial netting approach as described in § 1.704-3(e)(3)(iv). All § 704(c) and reverse § 704(c) allocations made under the partial netting approach will at all times comply with § 1.704-3(e)(3)(vi). X and Y will consistently apply the partial netting approach to all of their qualified financial assets for all taxable years in which X and Y qualify as securities partnerships. The partial netting approach adopted by X and Y will preserve the tax attributes of each item of gain or loss realized by X and Y;

- Each person that will own an interest, directly or indirectly, in X and Y is currently subject to federal income tax at the highest applicable tax rate. Further, each such person expects to continue to be subject to federal income tax at the highest applicable tax rate;

- Finally, Trust represents that contributions or revaluations of property and the corresponding allocations of tax items by X and Y will not be made with a view to shifting the tax consequences of built-in gain or built-in loss among the partners in a manner that would substantially reduce the present value of the partners' aggregate tax liability.

The following are representations by Trust regarding the additional contributions:

- Trust will contribute on behalf of the remainder beneficiaries only cash and/or a diversified portfolio of stocks and securities (within the meaning of § 1.351-1(c)(6)(i)) to X or Y;

- Each subsequent transferor to X or Y will contribute (or be deemed to contribute) only cash and/or a diversified portfolio of stocks and securities (within the meaning of § 1.351-1(c)(6)(i));

- X and Y will continue to invest only in cash and/or a diversified portfolio of stock and securities (within the meaning of § 1.351-1(c)(6)(i));

- Any other transferor who has or will contribute assets to X or Y has contributed or will contribute only cash and/or a diversified portfolio of stock and securities;

- X and Y will each qualify as a "securities partnership" as defined in § 1.704-3(e)(3)(iii);

- The securities contributed to X and Y will be actively traded within the meaning of § 1.1092(d)-1.

Trust requests the following rulings:

(1) Prior to the distribution of interests in X and Y to the remainder beneficiaries, X and Y will be disregarded entities as long as they remain single member series of a single-member limited liability company (wholly-owned by Trust) and items of income, deduction, credit, gains and losses with respect to assets held within X and Y should be reported directly on Trust's federal income tax returns (as if Trust continued to hold X and Y assets directly).

(2) Upon the distribution of interests in X and Y to the remainder beneficiaries, X and Y will be converted from disregarded entities to partnerships for federal tax purposes, and

distribution of X and Y interests by Trust shall be treated as (i) a non-taxable pro rata distribution of X and Y assets (subject to any related liabilities) to the remainder beneficiaries (in accordance with the fractional share of Trust residue to which each remainder beneficiary, respectively, is entitled), as if such assets had been distributed outright from Trust to the remainder beneficiaries; followed by (ii) a deemed capital contribution of those same assets by the remainder beneficiaries to X and Y in a non-taxable exchange for interests in X and Y.

(3) Once X and Y become partnerships for federal tax purposes, any subsequent in-kind Trust distribution of a “diversified portfolio of stocks and securities” (within the meaning of Treas. Reg. § 1.351-1(c)(6)(i) that is transferred as an addition to X or Y on behalf of some or all remainder beneficiaries who hold or thereby acquire membership interests in X or Y shall be treated as: (i) a non-taxable pro rata distribution of such Trust assets (subject to any related liabilities) to the remainder beneficiaries holding or thereby acquiring membership interests in X or Y (in accordance with the proportionate fractional share of the Trust residue to which each remainder beneficiary, respectively, is entitled), as if such assets had been distributed outright from Trust to such remainder beneficiaries; followed by (ii) a deemed capital contribution of those same assets by such remainder beneficiaries to X or Y in a non-taxable exchange for membership interests in X or Y.

(4) X’s and Y’s use of the partial netting approach as defined in § 1.704-3(e)(3)(iv) for aggregating gains and losses from qualified financial assets for the purpose of making reverse § 704(c) allocations is reasonable within the meaning of § 1.704-3(e)(3).

(5) X and Y have permission to aggregate built-in gains and losses from qualified financial assets contributed to X and Y by a partner with built-in gains and built-in losses from revaluations of qualified financial assets held by X and Y for purposes of making allocations under §§ 704(c)(1)(A) and 1.704-3(a)(6).

(6) After X and Y become partnerships for federal tax purposes, in-kind distributions of qualified financial assets from X and Y to one or more of its members will not be deemed a distribution of money under § 731(c). As a result, an in-kind distribution will not be treated as a “sale or exchange” and the distributee member should not recognize any gain or loss in connection therewith. Further, both (i) the “aggregate built-in gain or loss” at the partnership level, and (ii) the portion of such “aggregate built-in gain or loss” allocable to the partner receiving such distribution, may be adjusted by the full amount of net unrealized gain or loss in the assets so distributed.

Ruling Request # 1

Section 301.7701-3(a) of the Procedure and Administration Regulations provides, in part, that a business entity that is not classified as a corporation under §§ 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an “eligible entity”) can elect its

classification for federal tax purposes. An eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1)(ii) provides that in the absence of an election to be classified as an association, a domestic eligible entity with a single member will be disregarded as an entity separate from its owner.

Trust's contribution of marketable securities to X and Y in exchange for the all of the ownership interests in X and Y is disregarded for federal tax purposes because X and Y will not elect to be classified as an association, and therefore, will be disregarded as entities separate from Trust for federal tax purposes. Therefore, as long as Trust remains the single member of X and Y, items of income, deduction, credit, gains and losses with respect to assets held within X and Y should be reported directly on Trust's federal income tax returns as if Trust continued to hold X and Y assets directly.

Ruling Request # 2

Rev. Rul. 99-5, 1991-1 C.B. 434, explains the federal income tax consequences when a single member domestic limited liability company that is disregarded for federal tax purposes as an entity separate from its owner under § 301.7701-3 becomes an entity with more than one owner that is classified as a partnership for federal tax purposes.

Rev. Rul. 99-5 addresses two situations in which the disregarded entity becomes an entity classified as a partnership for federal tax purposes. In Situation 1, an unrelated person purchases an interest in the disregarded entity from its owner for cash. In Situation 2, an unrelated person contributes cash to the disregarded entity in exchange for an interest in the entity.

In Situation 1, Rev. Rul. 99-5 concludes that the purchase of an interest in a disregarded entity will be treated as the purchase of a share of the assets of the entity, the assets being treated as owned directly by the owner of the disregarded entity, followed immediately by the contribution of the assets by the purchaser and the original owner to a newly formed partnership in exchange for ownership interests.

In Situation 2, Rev. Rul. 99-5 concludes that the unrelated third party and the owner of the disregarded entity are treated as contributing cash and the entity's assets, respectively, to a newly formed partnership in exchange for partnership interests.

Upon Trust's distribution of interests in X and Y to the remainder beneficiaries, X and Y will each be converted from a disregarded entity to a partnership, similar to Situation 1, in Rev. Rul. 99-5. The distribution of X and Y interests by the Trust shall be treated as a non-taxable pro rata distribution of X and Y assets (subject to any related

liabilities) to the remainder beneficiaries (in accordance with the fractional share of Trust residue to which each remainder beneficiary, respectively, is entitled), as if such assets had been distributed outright from Trust to the remainder beneficiaries. The beneficiaries will be treated as contributing their respective interests in those assets to a partnership in exchange for ownership interests in the partnership. Under § 721(a), no gain or loss will be recognized by the remainder beneficiaries as a result of the conversion of the disregarded entity to a partnership. Rev. Rul. 99-5, Situation 1.

Ruling Request # 3

Consistent with the analysis for Ruling Request #2, the additional contributions shall be treated as non-taxable distributions of Trust assets (subject to any related liabilities) to the remainder beneficiaries (in accordance with the fractional share of Trust residue to which each remainder beneficiary, respectively, is entitled), as if such assets had been distributed outright from Trust to the remainder beneficiaries. The beneficiaries will be treated as contributing their respective interests in those assets to X or Y. Under § 721(a), no gain or loss will be recognized by the remainder beneficiaries as a result of the additional contributions.

Ruling Request # 4

Section 704(c)(1)(A) provides that income, gain, loss, and deduction with respect to property contributed to the partnership by a partner is shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution.

Section 1.704-3(a)(1) provides that the purpose of § 704(c) is to prevent the shifting of tax consequences among partners with respect to precontribution gain or loss. Under § 704(c), a partnership must allocate income, gain, loss, and deduction with respect to property contributed by a partner to the partnership so as to take into account any variation between the adjusted tax basis of the property and its fair market value at the time of the contribution. This allocation must be made using a reasonable method that is consistent with the purpose of § 704(c).

Section 1.704-3(a)(6) provides that the principles of § 1.704-3 apply to allocations with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues partnership property under § 1.704-1(b)(2)(iv)(f) (reverse 704(c) allocations). A partnership that makes allocations with respect to revalued property must use a reasonable method that is consistent with the purposes of § 704(b) and § 704(c).

Section 1.704-3(a)(2) provides that § 704(c) generally applies on a property-by-property basis. Therefore, in determining whether there is a disparity between adjusted tax basis and fair market value, the built-in gains and built-in losses on items of

contributed or revalued property generally cannot be aggregated.

Section 1.704-3(e)(3) provides a special rule allowing certain securities partnerships to make reverse § 704(c) allocations on an aggregate basis. Specifically, § 1.704-3(e)(3)(i) provides that, for purposes of making reverse § 704(c) allocations, a securities partnership may aggregate gains and losses from qualified financial assets using any reasonable approach that is consistent with the purposes of § 704(c). Once a partnership adopts an aggregate approach, the partnership must apply the same aggregate approach to all of its qualified financial assets for all taxable years in which the partnership qualifies as a securities partnership.

Section 1.704-3(e)(3)(iii)(A) provides that a securities partnership is a partnership that is either a management company or an investment partnership, and that makes all of its book allocations in proportion to the partners' relative book capital accounts (except for reasonable special allocations to a partner who provides management services or investment advisory services to the partnership). Under § 1.704-3(e)(3)(iii)(B)(2), a partnership is an investment partnership if (1) on the date of each capital account restatement, the partnership holds qualified financial assets that constitute at least 90 percent of the fair market value of the partnership's non-cash assets, and (2) the partnership reasonably expects, as of the end of the first taxable year in which the partnership adopts an aggregate approach under § 1.704-3(e)(3), to make revaluations at least annually.

Section 1.704-3(e)(3)(ii) provides that qualified financial assets are any personal property (including stock) that is actively traded, as defined in § 1.1092(d)-1 (defining actively traded property for purposes of the straddle rules).

Section 1.704-3(e)(3)(iv) and § 1.704-3(e)(3)(v) provide two approaches to making aggregate reverse 704(c) allocations that are generally reasonable -- the partial netting approach and the full netting approach. However, § 1.704-3(e)(3)(i) provides that other approaches may be reasonable in appropriate circumstances.

Section 1.704-3(a)(10) provides that an allocation method (or combination of methods) is not reasonable if the contribution of property (or event that results in reverse § 704(c) allocations) and the corresponding allocation of tax items with respect to the property are made with a view to shifting the tax consequence of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability.

Furthermore, § 1.704-3(e)(3)(vi) provides that the character and other tax attributes of gain or loss allocated to the partners under an aggregate approach must (1) preserve the tax attributes of each item of gain or loss realized by the partnership, (2) be determined under an approach that is consistently applied, and (3) not be determined with a view to reducing substantially the present value of the partners'

aggregate tax liability. Trust represents that X's and Y's allocations will comply with § 1.704-3(e)(3)(vi).

Trust represents that X and Y will elect the partial netting approach described in § 1.704-3(e)(3)(iv) for making reverse § 704(c) allocations. Section 1.704-3(e)(3)(iv) provides that to use the partial netting approach, the partnership must establish appropriate accounts for each partner for the purpose of taking into account each partner's share of the book gains and losses and determining each partner's share of the tax gains and losses. Under the partial netting approach, on the date of each capital account restatement, the partnership: (A) nets its book gains and losses from qualified financial assets since the last capital account restatement and allocates the net amount to its partners; (B) separately aggregates all realized tax gains and all realized tax losses from qualified financial assets since the last capital account restatement; and, (C) separately allocates the aggregate tax gain and aggregate tax loss to the partners in a manner that reduces the disparity between the book capital account balances and the tax capital account balances (book-tax disparities) of the individual partners.

After applying the relevant law to the information and representations submitted, we rule that if X and Y elect the partial netting approach for making reverse § 704(c) allocations, this will be a reasonable approach within the meaning of § 1.704-3(e)(3), provided that a contribution or revaluation of property and the corresponding allocation of tax items with respect to the property are not made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability.

Ruling Request # 5

The aggregation rule of § 1.704-3(e)(3) applies only to reverse § 704(c) allocations. Therefore, a securities partnership using an aggregate approach must generally account for any built-in gain or loss from contributed property separately. The preamble to § 1.704-3(e)(3) explains that the final regulations do not authorize aggregation of pre-contribution built-in gains and losses with built-in gains and losses from revaluations because this type of aggregation can lead to substantial distortions in the character and timing of income and loss recognized by contributing partners. T.D. 8585, 1995-1 C.B. 120, 123. However, the preamble also recognizes that there may be instances in which the likelihood of character and timing distortions is minimal and the burden of making § 704(c) allocations separate from reverse § 704(c) allocations is great. Consequently, § 1.704-3(e)(4)(iii) authorizes the Commissioner to permit, by published guidance or private letter ruling, aggregation of qualified financial assets for purposes of making § 704(c) allocations in the same manner as that described in § 1.704-3(e)(3).

In Rev. Proc. 2001-36, 2001-1 C.B. 1326, the Service granted automatic permission for certain securities partnerships to aggregate contributed property for

purposes of making § 704(c) allocations. Rev. Proc. 2001-36 also described the information that must be included with the ruling requests for permission to aggregate contributed property for purposes of making § 704(c) allocations submitted by partnerships that do not qualify for automatic permission.

Trust represents that the burden to X and Y of making § 704(c) allocations separate from reverse § 704(c) allocations will be substantial. X and Y will use the partial netting approach described in § 1.704-3(e)(3)(iv) for making § 704(c) and reverse § 704(c) allocations. The likelihood that this type of aggregation could be abused by X and Y and its partners is minimal.

After applying the relevant law to the information submitted and representations made, we rule that if X and Y use the partial netting approach to make § 704(c) allocations, including reverse § 704(c) allocations, this will be a reasonable method within the meaning of § 1.704-3(a)(1), and is permitted by the Commissioner under § 1.704-3(e)(4)(iii), provided that a contribution or revaluation of the property and the corresponding allocation of tax items with respect to the property are not made with a view to shifting the tax consequences of built-in gain or loss among the partners in a manner that substantially reduces the present value of the partners' aggregate tax liability.

This ruling is limited to allocations of gain or loss from the sale or other disposition of qualified financial assets made under § 704(b), § 704(c)(1)(A), and § 1.704-3(a)(6). Specifically, no opinion is expressed concerning allocations of items other than items of gain or loss from the sale or other disposition of qualified financial assets, or the aggregation of built-in gains and losses from qualified financial assets contributed to X and Y by any partner other than the partners described in this ruling (the remainder beneficiaries). X and Y must maintain sufficient records to enable them and their partners to comply with § 704(c)(1)(B) and § 737. Additionally, this ruling applies only to the contributions to X and Y (made in connection with the distributions by Trust and treated as described above in ruling requests # 2 and # 3) by the partners for which Trust supplied specific information concerning the contributed assets as described above, and not to any other contributions by the partners or any other future partner.

Ruling Request # 6

Section 731(a) provides that in the case of a distribution by a partnership to a partner, (1) gain shall not be recognized to such partner, except to the extent that any money distributed exceeds the adjusted basis of such partner's interest in the partnership immediately before the distribution; and (2) loss shall not be recognized to such partner, except that upon a distribution in liquidation of a partner's interest in a partnership where no property other than that described in § 731(a)(2)(A) or § 731(a)(2)(B) is distributed to such partner, loss will be recognized to the extent of the

excess of the adjusted basis of such partner's interest in the partnership over the sum of -- (A) any money distributed, and (B) the basis to the distributee, as determined under § 732, of any unrealized receivables (as defined in § 751(c)) and inventory (as defined in § 751(d)).

Section 731(c)(1) provides that for purposes of §§ 731(a)(1) and 737, the term “money” includes marketable securities, and such securities shall be taken into account at their fair market value as of the date of the distribution.

Section 731(c)(2)(A) provides that for purposes of § 731(c) the term “marketable securities” means financial instruments and foreign currencies which are, as of the date of the distribution, actively traded (within the meaning of § 1092(d)(1)).

Section 731(c)(2)(B)(iii) provides that for purposes of § 731(c) the term “marketable securities” also includes any financial instrument the value of which is determined substantially by reference to marketable securities.

Section 731(c)(2)(C) provides that the term “financial instrument” includes stocks and other equity interests, evidences of indebtedness, options, forward or futures contracts, notional principal contracts, and derivatives.

Section 731(c)(3)(A)(iii) provides that § 731(c)(1) shall not apply to the distribution from a partnership of a marketable security to a partner if such partnership is an investment partnership and such partner is an eligible partner thereof.

Section 731(c)(3)(C)(i) provides that the term “investment partnership” means any partnership which has never been engaged in a trade or business and substantially all of the assets (by value) of which have always consisted of- “(I) money, (II) stock in a corporation, (III) notes, bonds, debentures, or other evidences of indebtedness, (IV) interest rate, currency, or equity notional principal contracts, (V) foreign currencies, (VI) interests in or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any asset described in any other subclause of this clause or in any commodity traded on or subject to the rules of a board of trade or commodity exchange, (VII) other assets specified in regulations prescribed by the Secretary, or (VIII) any combination of the foregoing.”

Section 731(c)(3)(C)(ii) provides that a partnership shall not be treated as engaged in a trade or business by reason of (I) any activity undertaken as an investor, trader, or dealer in any asset described in § 731(c)(3)(C)(i), or (II) any other activity specified in regulations prescribed by the Secretary.

Section 731(c)(3)(C)(iii) provides that the term “eligible partner” means any partner who, before the date of the distribution, did not contribute to the partnership any property other than assets described in § 731(c)(3)(C)(i).

Based solely on the information provided and representations made, we conclude that the beneficiaries will be “eligible partners” of X and Y within the meaning of § 731(c)(3)(C)(iii), even though their asset contributions will be deemed contributions (as set out in rulings # 2 and # 3), provided that the beneficiaries do not contribute any property other than property described in § 731(c)(3)(C)(i) prior to the date they receive an in-kind distribution from X and Y. If the condition stated above is met, and if X and Y meet the definition of an investment partnership under § 731(c)(3)(C)(i) after X and Y are each converted from a disregarded entity to a partnership, an in-kind distribution to a partner of X or Y will not be treated as a distribution of money. As a result, the in-kind distributions will not cause the partner to recognize gain or loss under § 731(a). Further, both (i) the “aggregate built-in gain or loss” at the partnership level, and (ii) the portion of such “aggregate built-in gain or loss” allocable to the partner receiving such distribution, may be adjusted by the full amount of net unrealized gain or loss in the assets so distributed.

Except as specifically ruled upon above, we express no opinion on the federal tax consequences of the transactions described above under any other provisions of the Code and regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, any transaction that is not specifically covered by the above rulings.

This ruling is directed only to the taxpayer who requested it. However, in the event of a technical termination of X or Y under § 708(b)(1)(B), the resulting partnership may continue to rely on this ruling with regard to any relevant ruling contained within. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to Trust's authorized representatives.

Sincerely,

Laura C. Fields

Laura C. Fields
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for § 6110 purposes